

Serial No. 10/782,794
Docket No. 28967.0178

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Serial No.: 10/782,794

Confirmation No.: 6789

In re Application of:

Mark Roland BOEDER

Group Art Unit: 1661

Filed: February 23, 2004

Examiner: Kent L. Bell

For: CHRYSANTHEMUM PLANT NAMED 'CETWOTONE PINK'

RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF

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Appellant's undersigned attorney has received the Notice mailed from the USPTO on May 12, 2008. That Notice alleges that appellant's Brief on Appeal filed May 5, 2008 is defective because "the brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, in any, by reference characters."

Appellant notes that the brief, page 2, Section V. expressly summarizes the claimed subject matter in the sole claim of this application as "a new and distinct variety of

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chrysanthemum plant, named "CETWOTONE PINK", as described and illustrated in this application. (emphasis added here).

This is a plant patent application. The entire application, including specification and drawings are the "concise explanation of the subject matter" defined in the only claim in this application, and the only claim on appeal. The alleged requirement that a concise explanation in a Brief on Appeal requires reference to the specification by page and line number and to the drawings by reference character number, is inapposite to a plant patent application. The photographic drawings in a plant patent application have no reference numbers, and no portion of the disclosure, less than the disclosure as a whole, is appropriate to mention as a "concise explanation" of the claimed subject matter. The disclosure as a whole, that is the specification and photographic drawings as a whole, are the only explanation of the subject matter defined in the sole claim of a plant patent application.

Accordingly, appellant respectfully requests withdrawal of the Notice mailed May 12, 2008, and consideration of appellant's Brief on Appeal as filed May 5, 2008.

Respectfully submitted,



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Registration No. 25,177

Date: May 13, 2008

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CERTIFICATE OF TRANSMISSION
I hereby certify that the attached correspondence is being facsimile transmitted to the U.S. Patent and Trademark Office at Facsimile Number (571) 273-8300 on 5/13, 2008
By: Hortense G. Coleman
Hortense G. Coleman